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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,627	02/05/2004	Bryan Hiromoto	437472000210	8349

25225 7590 01/19/2007
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1655

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/773,627

Applicant(s)

HIROMOTO, BRYAN

Examiner

Michael V. Meller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-29, 31, 33, 35 and 45-47 is/are pending in the application.
- 4a) Of the above claim(s) 35 and 45-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-29, 31, 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, claims 19-29, 31 and 33 and the species of Toximul SEE-340 as element (a) in claim 19, element (b) being surfactant blend 1910 and element (c) being H306A in the reply filed on 11/13/2006 and 7/24/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The election of species with regard to components (b) and (c) in claim 19 is withdrawn. Please note that the election of species with regard to component (a) is still maintained and the species elected was Toximul SEE-340 and as noted in the specification at the paragraph bridging pages 10-11, Toximul SEE-340 is a sorbitan trioleate ethoxylate since that is what it is, thus that is what is being examined.

Claims 35, 45-47 are withdrawn from further consideration as being drawn to non-elected inventions.

The restriction and species requirement are made FINAL.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-29, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marschner et al. (US Patent 3705855-see entire reference, especially col. 1, lines 1-25, col. 3, lines 20-65, the examples, claims).

Marschner (US Patent 3705855) teaches that ethoxylated sorbitan trioleate (the component (a) of claim 19 elected as Toximul SEE-340 and as noted on the paragraph bridging pages 10-11, Toximul SEE-340 is a sorbitan trioleate ethoxylate) is in an emulsion, see example 2. It also teaches that alcohol sulfates such as ethoxylated alcohol sulfate (an anionic surfactant) of ethoxylated alcohol (see col. 3, lines 25-40) can also be in the composition. Since the surfactants are used in small amounts they can be viewed as microemulsions since they are in an emulsion and small amounts are used (as the claims are given their broadest reasonable interpretation).

It would have been obvious to one of ordinary skill in the art to use them together in the same composition since they are taught in the same reference as being components in the disclosed emulsion of the reference. The sorbitan trioleate of example 2 is clearly preferred and to use the alcohol sulfate is simply the choice of the artisan in an effort to optimize the desired results since it is also clearly contemplated by Marschner as well.

Claims 19-29, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varadaraj et al. (US Patent 5514588-see col. 4, lines 15-25, the examples, the claims) in view of Schnee et al. (US Patent 4521552-col. 4, lines 20-25, the examples).

Varadaraj teaches that sorbitan trioleate ethoxylate (the component (a) of claim 19 elected as Toximul SEE-340 and as noted on the paragraph bridging pages 10-11, Toximul SEE-340 is a sorbitan trioleate ethoxylate) is used in a composition which can also include anionic surfactants.

Varadaraj does not teach that the composition is an emulsion.

Schnee teaches that sorbitan trioleate ethoxylates are commonly used in emulsions, see col. 4, lines 15-25, the examples.

It would have been obvious to use the emulsion of Schnee in the process of Varadaraj since Schnee makes it clear that aqueous solutions containing emulsions are used as sedimentation aids among many other useful purposes. Such sedimentation aids could be well used when treating contaminated waters such as in Varadaraj.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-

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0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michael V. Meller
Primary Examiner
Art Unit 1655

MVM